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AGENDA ITEM 3b

TO: MEMBERS OF THE HEALTH BENEFITS COMMITTEE

- I. SUBJECT:** Proposed Regulations: Prohibition on Rescissions
- II. PROGRAM:** Health Benefits
- III. RECOMMENDATION:** Staff recommends the Health Benefits Committee approve the proposed regulations to conform State Regulations to federal health care reform provisions that prohibit rescissions of coverage in specific circumstances.

IV. BACKGROUND:

The Public Employees' Medical and Hospital Care Act (PEMHCA) regulations currently allow CalPERS to process retroactive cancellations of coverage back to the date of the permitting event. Refunds for excess premiums paid are allowable for a period of up to six months. The Patient Protection and Affordable Care Act of 2010 (the Act), and federal regulations (45 CFR 144, 146, and 147) prohibit group or individual health plans from terminating health coverage once the employee is covered, except in cases of fraud or intentional misrepresentation of material facts. In these cases, a 30-day notice must be provided to the enrollee prior to rescinding health coverage. A retroactive cancellation of coverage due to a reduction in time base or hours is specifically defined as a rescission and is prohibited.

While CalPERS implemented this federal provision as of January 1, 2011, when the new health plan year began, it is necessary to conform related State Regulations to the new requirement.

V. ANALYSIS:

Federal Regulations

The U.S. Department of Health and Human Services (HHS) issued interim final regulations regarding rescissions on June 28, 2010, to prohibit a cancellation or discontinuance of coverage that has a retroactive effect. A prospective

cancellation or discontinuance of coverage is not defined as a rescission, nor is a retroactive cancellation or discontinuance of coverage that is processed due to failure to timely pay required contributions toward the cost of coverage. On October 8, 2010, HHS issued clarifications further defining which retroactive cancellations are considered rescissions.

The HHS clarified that some plan errors, such as mistakenly covering an employee whose reduction in hours or time base resulted in a loss or cancellation of coverage, must be corrected prospectively only, except in cases of fraud or intentional misrepresentation of material facts. In these instances, enrollees are required to receive a 30-day notice prior to the termination of coverage.

Other retroactive mandatory cancellations for changes that take place in an employee's life – such as death of a family member, change in marital status, termination of employment – are not considered by HHS to be “rescissions,” under 45 CFR 144, 146, and 147, and may therefore be processed retroactively to the date of the permitting event.

State Law Conforming Amendments

Eligibility to participate in the CalPERS health benefits program is determined by California Government Code § 22750 et seq. under PEMHCA and State Regulations codified in Title 2, California Code of Regulations (CCR), § 599.500 et seq.

Current State Regulations

Under CCR § 599.502, subdivision (f), subsection (2)(C), when a mandatory change of enrollment occurs and there is a lapse of time between when the family member becomes ineligible and when the enrollment is actually changed, the employee and employer may receive a refund for up to six months for the excess premiums paid.

Proposed State Regulations

The proposed regulations in Attachment 1 would amend CCR § 599.502, subdivision (f), subsection (2) . The amendment makes an exception to the provision on refunds for excess premiums paid, and references the proposed new subsection (f) to CCR § 599.506.

The amendments to CCR § 599.502, subdivision (f), subsection (2) clarify that the employer or employee may receive a refund for up to six months for the excess premiums paid, except as mentioned in proposed subdivision (f) of CCR § 599.506, regarding prohibitions on retroactive terminations of coverage for a reduction in hours or time base.

The proposed addition of CCR § 599.506, subdivision (f) states that retroactive terminations of coverage cannot be made for employees who reduce their hours or time base, except in cases of fraud or intentional misrepresentation of material facts. In these instances, the employee must receive a 30-day notice prior to the termination.

Stakeholder Input

The Health Benefits Branch staff met with health plans to discuss the impacts and ramifications of the federal regulations on the prohibition on rescissions. All parties are in agreement with the interpretation of the federal regulations and the Act, and are implementing the provisions consistently across all health plans.

VI. STRATEGIC PLAN:

This Item supports Strategic Goal XII: Engage and influence the health care marketplace to provide medical care that optimizes quality, access, and cost.

VII. RESULTS/COSTS:

On December 22, 2010, CalPERS issued Circular Letter 600-067-10, titled "New Regulations Affecting Cancellations or Discontinuance of Health Coverage Due to a Reduction in Time Base," to employers. Additionally, CalPERS has issued Automated Communications Exchange System alerts and other systems updates. Procedure manual updates are forthcoming, and systems will prevent employers from processing retroactive cancellations of coverage for reduction in time base or hours beginning in February 2011.

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Attachment